

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

EURAL BLACK,

Petitioner,

v.

CIVIL ACTION NO. 5:18-cv-00971

DAVID L. YOUNG,

Respondent.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the Petitioner's May 30, 2018 *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1) and the *Memorandum in Support of Motion Pursuant to Title 28 U.S.C. § 2241* (Document 2), brought on the grounds, *inter alia*, that intervening decisions invalidate some of his convictions and sentences.

By *Standing Order* (Document 4) entered on May 31, 2018, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On February 28, 2019, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (PF&R) (Document 16) wherein it is recommended that this Court grant the Respondent's motion to dismiss or, in the alternative, to transfer, construe the Petitioner's application under § 2241 as a motion requesting permission to file a successive Section 2255 motion, and transfer it to the Seventh Circuit Court of Appeals. In the event the Petitioner objects to transfer, the Magistrate Judge recommends dismissal.

The Petitioner timely filed *Movant's Objections to the Magistrate's Proposed Findings and Recommendation* (Document 19), docketed on March 27, 2019. Following the United States Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (June 24, 2019), holding that 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague, the Court gave the Petitioner another opportunity to consent to transfer. The Petitioner submitted a letter agreeing that the matter should be transferred to the Seventh Circuit Court of Appeals, as recommended in the PF&R. Therefore, the Court will not address the previously filed objections.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation* (Document 16), and **ORDERS** that the *Response to Order to Show Cause and Motion to Dismiss or, in the Alternative, to Transfer* (Document 10) be **GRANTED** to the extent it seeks transfer, that the Petitioner's *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1) and the *Memorandum in Support of Motion Pursuant to Title 28 U.S.C. § 2241* (Document 2) be **CONSTRUED** as a motion requesting permission to file a successive Section 2255 motion, and that this matter be **TRANSFERRED** to the Seventh Circuit Court of Appeals.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to the Clerk of the Seventh Circuit Court of Appeals, to Magistrate Judge Aboulhosn, to counsel of record and to any unrepresented party.

ENTER: August 12, 2019


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA